GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17349 of Michael Taylor, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to a single-family detached dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements (§ 403), side yard requirements (§ 405), and nonconforming structure provisions (§ 2001.3) in the R-1-B District at premises 6919 6th Street, N.W. (Square 3191, Lots 19 and 811).

HEARING DATES: July 12, 2005, September 13, 2005, October 25, 2005
DECISION DATE: November 1, 2005

DECISION AND ORDER

Michael Taylor, the property owner (the Owner or the Applicant) of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on April 25, 2005 for a special exception under § 223 to construct an addition to his residence[1] where the addition will not conform to the minimum lot occupancy requirements, side yard requirements, or nonconforming structure provisions of the Zoning Regulations. Following a public hearing, the Board voted to deny the special exception.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17349
EXHIBIT NO. 52

Preliminary Matters

Authorization of Agent and Legal Representation The Owner authorized Edgar T. Nunley as his agent for filing the application (Exhibit 5), and was also represented by Jonathan Farmer, Esq. during the public hearing before the Board.

Notice of Public Hearing Pursuant to 11 DCMR 3113.13, notice of the hearing was sent to the Owner, all owners of property within 200 feet of the subject site,

[1] As will be explained in the Findings of Fact, the addition was nearly under roof at the time of the public hearing.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17349
EXHIBIT NO. 52

the Advisory neighborhood Commission (ANC) 4B, and the District of Columbia Office of Planning (OP). The Owner posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 31).

ANC Report In its report dated June 14, 2005, ANC 4B indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to oppose the special exception (Exhibit 24). ANC Commissioner Faith Wheeler also testified that the addition was "oversized" and "intrusive" (See Written Statement, Exhibit 42).

Request for Party Status ANC 4B was automatically a party to this proceeding. The Board received a request for party status from a group of neighboring property owners identified as the "Friends and Neighbors of Square 3191", referred to herein as the "Neighbors" (Exhibit 29). The request for party status was granted and the Neighbors opposed the application at the public hearing, asserting, among other things, that the addition is an "aberration" because of its size and scale, and that it would adversely impact upon their privacy and light and air. The Neighbors were represented throughout the proceedings by Andrea Ferster, Esq.

Other Persons in Support/Opposition The Board received letters in opposition from two neighborhood associations, the Takoma DC Neighborhood Association and Historic Takoma, Inc. (Exhibits 27, 28). It also heard opposition testimony and received opposition letters from several individuals and two council members, and a petition in opposition from several neighbors (See, Exhibits 22, 23, 25, 26, 29, 35, 37, 38, 44, 47, and 48). There were no letters in support.

Government Reports

OP Report OP initially stated that it was unable to conduct a full review of the application without a "topographic map" and "accurate calculation of lot occupancy" (Exhibit 30). After the applicant submitted updated topographic and building plans (Exhibits 40, 49), OP prepared a supplemental report recommending denial of the application (Exhibit 41). Among other things, OP concluded that the dwelling with addition was "out of character and scale" with neighborhood homes and that the proposed addition would unduly compromise the privacy of use and enjoyment of adjoining properties... Maxine Brown Roberts, the OP representative who prepared the report, testified that the dwelling with addition "towered" over nearby properties, impacting on their privacy. She also

stated that the "rectangular box" shape of the addition was out of character with the neighborhood.

Historic Preservation Review Board (HPRB) Although HPRB did not submit a written report, it considered the addition and the Applicant's request to demolish the garage. It conducted a public hearing on September 24, 2004, but did not approve the addition or the demolition, and requested that the applicant reconsider the design of the addition (OP Report, Exhibit 41, HPRB Transcript, Exhibit 46).

Request to Continue The Applicant requested a continuance at the July 12, 2005 public hearing due to his counsel's unavailability and to allow him to provide the survey plat and topographical plan requested by OP. The Board granted the Applicant's request for a continuance over the Neighbor's objection, held the record open for the topographical plan and OP's supplemental report, and rescheduled the case for September 13, 2005.

Motion to Dismiss
Prior to the re-scheduled public hearing date on September 13, 2005, the Neighbors filed a motion to dismiss the application based upon the Applicant's failure to file the topographical analysis (Exhibit 33). The Neighbors argued that because he had not supplied the topographical plan, the Owner had failed to diligently prosecute his application. The Board denied the motion to dismiss, but rescheduled the hearing for October 25, 2005 so that the topographical plan could be filed and OP could supplement its report.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property consists of two lots located at 6919 6th Street, NW, Lots 19 and 811 at Square 6919 in the R-1-B zone. The Owner has submitted an application to the Surveyors Office to have the lots combined.

2. The property was improved in 1919 with a one-story single family dwelling on Lot 19 and a one-story garage on Lot 811. Lot 19 is nonconforming under current zoning regulations in that it only encompasses 2,875 square feet of land area instead of the 5,000 square feet required by current regulations. Lot 811 is 2,850 square feet in area and is an interior lot sharing the east property line of Lot 19.

3. The property is located in the in the Takoma Park Historic District, a residential neighborhood with a mix of large Victorians, medium sized homes, "four-squares", and small one-and-a-half story bungalows. The District is also characterized by tree-lined streetscapes and yards and large, spacious front and back yards.

Background

4. The Applicant acquired the property (Lots 19 and 811) in 2003 and retained an architect to draw plans to renovate the existing dwelling and construct a rear addition. Once the plans were completed, the Applicant applied for and obtained the necessary building permits from DCRA.[2]

5. Construction proceeded until the building was nearly under roof. However, DCRA later issued a "stop work" order after it determined that an error had been made when the permit had been issued. DCRA found that, once the two lots were combined, the existence of the garage created new non-conformities with respect to side yard and lot occupancy.

6. The Owner first attempted to resolve the zoning issues by eliminating the garage. He applied to HPRB for permission to raze it. However, the Owner maintains that HPRB "tabled" the request and he was "left in limbo" (Exhibit 20). The Owner filed this application to allow continued construction of the renovation and addition to the property.

The Application

7. The application is for a two-story addition to the rear of the existing home and garage (Exhibit 1). The dwelling with addition will not comply with minimum side yard requirements or lot occupancy requirements, and will extend the existing nonconforming structure. (See, OP Report, Exhibit 41, DCRA Referral Letter, Exhibit 4). As a result, the Owner seeks relief under § 223 of the Zoning Regulations, which would permit the addition provided specific criteria are met.

8. The existing one-story garage is approximately one foot from the property line and thereby does not meet the side yard requirement of eight feet.

---

[2] Because the property is located within an historic district, the permit application and plans were also referred to the HPRB.

9. A combination of the existing house, the addition, and the garage would yield a lot occupancy of 43.7%, beyond the 40% allowed in the R-1-B district.

The Impact of the Addition

10. The addition is approximately one and one-half times the size of the original structure. While there are neighborhood dwellings with additions of comparable size, most of those properties are located on larger lots.

11. The Owner submitted a DC Surveyor's plat, elevations (original and revised) a site plan, and photographs depicting the relationship of the addition to adjacent buildings and views from the public ways (Exhibits 2, 3, 6, 8, and 39).

12. The Neighbors also submitted photographs depicting the character of the neighborhood and the relationship of the addition to nearby buildings (Exhibit 50). The photographs show: (a) many of the homes in the vicinity of the subject property are comparatively "small" (Exhibit 50, p. 5); (b) even the nearby homes with existing additions are "small" compared to the dwelling and addition proposed here (Exhibit 50, p. 6, 7, 8, and 9);and the proposed addition "towers" over neighboring yards such as 528 Cedar Street, 520 Cedar Street, and 6915 6th Street, intruding upon their privacy of use and enjoyment (Exhibit 50, p. 13, 14, 15, and 16).

13. Although there are trees in the rear yards of the adjacent properties, the addition is high enough to overlook them and give clear views onto adjacent properties. (OP Report at 3, Ex. 41)

14. The Owner also submitted a topographical site plan showing the site elevations, the height of the addition, and the impact on the surrounding neighbors (Exhibit 40).

15. The topographic plan submitted by the applicant, and reviewed by OP, indicates a change in elevation of the subject site relative to adjacent properties; *i.e.*, the elevation at the property is substantially higher than the elevations at adjacent properties (Exhibit 41) The grade is higher along 6th Street and dramatically falls towards the rear of the property.

16. The proposed addition will not be visible from 6th Street. However, the portion of the addition that towers over and extends beyond the garage will be visible from Cedar Street. The massing of the building – its heavy and intrusive

articulation – produces an unbroken roof line and rectangular box shaped addition. The structure is out of character with the historic Takoma Park neighborhood and as viewed from the street, alley, or public way, will visually intrude upon the character, scale and pattern of homes along the street frontage. (See OP Report, Ex. 41).

17. The above referenced adverse impacts are a result of the massing of the structure, and therefore cannot be mitigated with conditions such as screening or the elimination of windows.

18. The addition will be visible from the existing houses to the north, south, and east. Because of the size of the addition and the comparatively high elevation at the property, the addition "towers" over nearby properties and will be viewed as three stories.

19. The proposed addition will not adversely affect the light and air to adjacent properties. The garage that currently exists on the side of the house will not be enlarged and the houses on abutting properties are located away from the garage so that it does not affect their light. The house is located in an east-west direction and therefore will not cast shadows on adjacent properties (Exhibit 41).

CONCLUSIONS OF LAW

The Special Exception

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § 223 and 3104.1 to construct an addition to a one-family dwelling in an R-1-B District, where the addition will not comply with the lot occupancy requirements of § 403, the side yard requirements of § 405,), and nonconforming structure provisions of § 2001.3.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are demonstrated.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of

neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to the first test, the proposed addition will not change the residential use of the dwelling. However, as will be explained more fully below, it will not be in harmony with the existing residential neighborhood. The addition together with the original building is inconsistent with the character and scale of neighborhood homes. Also, the addition will compromise the privacy of adjacent homes and adversely affect the use of neighboring properties.

Since the second test is nearly identical to the criteria for the special conditions under § 223, it will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1".

The "special conditions" for an addition under § 223.1. Under Section 223.1 of the Zoning Regulations, the Board may permit an addition to a single family dwelling where it does not comply with applicable area requirements, such as the side yard requirement, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

> Sec. 223.2(a). The light and air available to neighboring properties shall not be unduly affected. Although individual property owners testified to the contrary, the Board is not persuaded that the light and air to neighboring properties would be unduly affected by the proposed addition (Finding of Fact 19).
>
> Sec. 223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The Board finds that the privacy of use and enjoyment of neighboring properties would be unduly compromised by the proposed addition. The addition will create a "towering" effect which would compromise the privacy of neighboring properties (Finding of Fact 18).
>
> Sec. 223.2(c). The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. The proposed addition will be visually intrusive as viewed from the street. As set forth above, the dwelling with proposed addition is not in character with neighboring properties due to its size, massing and design (Findings of Fact 10, 11, 12, 13, 14, 15, 16 and 17). Because of the high elevations at the property the structure would be visible from several

directions, including Cedar Street, and would "visually intrude" upon the area.

Sec. 223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-1-B zone (Finding of Fact 1). The proposed lot occupancy of 43.7% is less than the maximum 50% permitted in the R-1-B zone district. Therefore, this condition is met.

Sec. 223.5 This section may not be used to permit the introduction or expansion of a nonconforming use. A single family detached house is permitted as a matter of right within the R-1-B zone. Therefore, the proposed application will not permit the introduction or expansion of a nonconforming use.

In sum, the Applicant has failed to meet all of the "special conditions" under § 223.2, in particular, sub-sections 223.2(b) and (c).

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this Decision and Order, the Board finds the ANC's advice to be persuasive.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

For the reasons stated above, the Board concludes that the applicant has failed to meet the burden of proof with respect to the application for a special exception under § 223.

Therefore, for the reasons stated above, the application for a special exception is **DENIED**.

VOTE: **4-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr. by absentee ballot, and John A. Mann II, in favor of the motion to deny; and no Zoning Commission member having participated in the application)

Vote taken on November 1, 2005

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 09 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT *UNTIL TEN DAYS AFTER HAVING BECOME* FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."